

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WESLEY J. MANNS)	
Claimant)	
VS.)	
)	Docket No. 1,013,555
CESSNA AIRCRAFT)	
Self-Insured Respondent)	

ORDER

Respondent appealed the October 27, 2005, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Claimant alleges he sustained repetitive trauma injuries to both upper extremities due to the work he performed for respondent. For purposes of this workers compensation claim, claimant alleges a July 31, 2003, date of accident.

In the October 27, 2005, Order, Judge Clark authorized Dr. J. Mark Melhorn to treat both of claimant's upper extremities and shoulders.

Respondent contends Judge Clark erred. Respondent argues claimant aggravated his injuries while working for another employer after he left respondent's employ and, therefore, respondent should not be responsible for providing claimant with medical treatment. Accordingly, respondent requests the Board to reverse the October 27, 2005, Order.

Conversely, claimant requests the Board to dismiss this appeal for lack of jurisdiction or, in the alternative, to affirm the October 27, 2005, Order. Claimant also argues the issue of an intervening accident was not properly before the Judge as respondent failed to file an application for a preliminary hearing to terminate medical benefits.

The issues before the Board on this appeal are:

1. Is an employer required to file an application for a preliminary hearing to terminate medical benefits before it may assert an affirmative defense such as a worker's present need for medical treatment is due to a subsequent or intervening accident?

2. Does the Board have jurisdiction to review a preliminary hearing order to address the issue of whether requested medical treatment is related to an accidental injury that occurred at work?
3. Did claimant prove the requested medical benefits were reasonable and necessary to treat the work-related accident he sustained while working for respondent?

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

1. Claimant developed pain in his wrists, arms, and shoulders while working for respondent. Claimant described his job duties as requiring “[a] lot of sanding and use of air tools.”¹
2. Dr. C. Reiff Brown, who examined claimant in August 2004 at claimant’s attorney’s request, described claimant’s work as repetitive and hand intensive. The doctor noted claimant’s history of injury, in pertinent part:

As a result of the repetitive hand intensive work that he [claimant] performed while employed [at] Cessna he developed bilateral elbow pain and pain in the right shoulder. Intermittent numbness and some nighttime paresthesias of the hands also were noted. He was initially treated at Cessna Medical and nerve conduction studies revealed mild carpal tunnel syndrome on the right and bilateral mild Guyon’s Canal Syndrome. He was referred to Dr. Estivo who treated him conservatively and subsequently diagnosed a partial rotator cuff tear and tendonitis involving the right shoulder. This was treated surgically on March 30, 2004 with decompression and arthroscopic acromioplasty. This helped some but he continued to have discomfort in the front of the shoulder especially on use of the hand above shoulder level or for reach. He was dismissed by Dr. Estivo in June 2004.²

3. According to the exhibits introduced at the preliminary hearing, claimant continued to work for respondent through October 23, 2003, when he was terminated due to respondent allegedly finding some information in claimant’s medical history that he failed to disclose when hired.

¹ P.H. Trans. at 8.

² *Id.*, Cl. Ex. 1 at 1.

4. After being terminated by respondent, claimant worked from 2½ to 4 months for another employer, Burr-Master, removing burrs from small parts. Claimant described the job, as follows:

It is called breaking sharp edges, deburring, breaking sharp edges.

....

The real small parts. And you just take like a one-inch paint scraper and you just scrape the -- like if there was an apex or a corner, you just scratch it and it would break that sharp corner off. And then they had what they call just little flat discs, sanding flat discs where you just stick the part on there on the deal and it would sand the areas that you couldn't reach with a scraper. That was pretty much it.³

Despite that work, claimant did not believe his symptoms worsened. Dr. Brown, however, believed that work did increase claimant's hand and arm symptoms, but those "symptoms returned to the same baseline level" once the Burr-Master job was discontinued.⁴

5. In December 2004, claimant began seeing Dr. J. Mark Melhorn. After receiving more than one letter from respondent's attorney, on January 20, 2005, Dr. Melhorn wrote respondent's attorney after concluding claimant's work at Burr-Master aggravated claimant's "musculoskeletal complaints" and, "[t]herefore an apportionment may be a reasonable consideration."⁵

CONCLUSIONS OF LAW

The Board has jurisdiction to review a preliminary hearing order that addresses the issue of whether a worker's request or need for medical treatment relates to a compensable work-related accident or whether such requested medical treatment relates to some other condition or incident.⁶ Moreover, filing an application for a preliminary hearing to terminate medical benefits is not a prerequisite before an employer raises an affirmative defense at a preliminary hearing.

³ P.H. Trans. at 9.

⁴ *Id.*, Cl. Ex. 1 at 2.

⁵ *Id.*, Cl. Ex. 2.

⁶ K.S.A. 44-534a.

The Workers Compensation Act requires employers to furnish such medical treatment that may be reasonably necessary to cure and relieve an injured worker from the effects of a work-related injury.⁷ Accordingly, not every subsequent aggravation or subsequent injury will relieve an employer from providing medical benefits for the initial work-related injuries the worker sustained while in that employer's employ.

For preliminary hearing purposes, the Board finds claimant injured his upper extremities while working for respondent and that the medical services of Dr. Melhorn as ordered by Judge Clark are related to those injuries. At this juncture, the evidence fails to establish that it is more probably true than not that claimant sustained an additional injury during the short period of time that he worked for Burr-Master that would relieve respondent from providing medical benefits for claimant's bilateral upper extremity injuries. According to Dr. Brown, after claimant left Burr-Master claimant's symptoms returned to the level they were when he commenced that job. And claimant fails to attribute his present injuries or symptoms to his work at Burr-Master.

In light of the above, the October 27, 2005, preliminary hearing Order should be affirmed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁸

WHEREFORE, the Board affirms the October 27, 2005, Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of December, 2005.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁷ K.S.A. 44-510h.

⁸ K.S.A. 44-534a(a)(2).